IN THE HIGH COURT OF JUDICATURE AT BOMBY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1929 OF 2002

1. Gas Authority of India Limited,)
a Company incorporated under)
the provisions of the Companies)
Act, 1956 and having its Office)
at LPG Recovery Plant, Usar,)
Tahsil Alibag, District Raigad 402203)
)
2. Marianus Baa residing at B-705)
Dheeraj Garden, Poonam, Nagar,)
Mumbai - 400 093) ...Petitioners.

V/s

1. State of Maharashtra)
2. District Collector, Raigad)
3. Tahsildar, having Office at)
Tahsil Office, Raigad) ....Respondents.

Mr. Shriaz Rustomjee with Mr. Ketan Gupta i/b Mr. Mustafa S. Motiwala for Petitioners.

Mr. V. P. Malwankar, Assistant Government Pleader, for Respondents

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CORAM: **H.S. BEDI, C.J.,** &
V.M.KANADE, J.

DATE : OCTOBER 10, 2006

ORAL JUDGMENT: (Per H.S. Bedi, C.J.)

1. The Petitioners - Gas Authority of India Limited made an application to the Central Government for acquisition of the rights of user in 17 villages under the Petroleum and Minerals Pipe-lines (Acquisition of Right of User in Land) Act, 1962 [hereinafter called "the Act"]. By an order dated 11th April, 1994 one Mr. V.S. Naik was appointed as the Competent Authority under the provisions of the Act. On 13th May, 1995, the Government of India issued a Notification under Section 3, declaring its intention to acquire right of user in land in respect of the 17 villages in question. On 10th September, 1996, the Competent Authority by its letter informed Respondent No.2 - the District Collector Raigadh of its intention to lay a natural gas pipeline from Thal to Usar. The Government of India issued Notifications dated 9th January, 1997 and 23rd April, 1997, declaring its intention to give a right of user in land to the Petitioners for the purpose of laying an underground pipe-line. The Competent Authority by its Award dated 21st April, 1998 awarded a sum of Rs 4,84,689/- to be paid to Respondent No.2 in respect of

the land which, admittedly, belonged to the State Government. The work of laying down the underground pipe-line was completed by the Petitioners in May, 1998. The Petitioners are aggrieved by the communication dated 14th December, 1998 - Exhibit “I” whereby Respondent No.2 has directed the Petitioners to pay an additional sum calculated @ Rs 15% of the market value of the land as a charge for continued use of the land in question. The Petitioners filed their reply dated 11th March 2002 - Exhibit “L” and pointed out that the Competent Authority had paid the compensation for the notified land and that no additional sum was due as per law as the land had vested in the Petitioners free from all encumbrances for the purpose of user. The Petitioners are aggrieved by communication dated 15th March, 2002 - Exhibit “M” to the Petition calling them to make the payment or to face coercive action. Despite reminders, it appears that the Respondent No.2 did not give any reply to the petitioners, which has led to the filing of the present Writ Petition.

2. Despite the fact that this matter has been pending

since the year 2002, no reply has been filed by the Respondents. We have accordingly heard the matter as it is.

3. The learned Counsel for the petitioners has placed reliance on the Statement of Objects and Reasons and, in particular, to Sections 3, 6, and 10 of the Act, to submit that after the land had been notified for user, and compensation had been paid in accordance with the Award rendered by the Competent Authority, the land vested free from all encumbrances with the Petitioners for the purpose of user and no further amount for right of user was due under any law. The learned Assistant Government Pleader appearing on behalf of the Respondents, has, on the other hand, relied upon the provisions of Rule 39 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 [hereinafter called “the Rules”] to argue that the imposition of the cess was fully justified.

4. We find that the Objects and Reasons pertaining to the land clearly spell out that for the purpose of creating right of user in the land, either in Central Government or its

nominee, a declaration is required to be made and compensation to be paid to the owner of the land. The Statement of Objects and Reasons have been elaborated in Sections 3, 6, and 10 of the Act and are reproduced hereunder:-

> "3. Publication of notification for acquisition.- (1) Whenever it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum [of any minerals] from one locality to another locality pipelines may be laid by that Government or by any State Government or a Corporation and that for the purpose of laying such pipelines it is necessary to acquire the right of user in any land under which such pipelines may be laid, it may, by notification in the Official Gazette, declare its intention to acquire the right of user therein."

> "6. Declaration of acquisition of right of user.-
> (1) .....

.....

(2) On the publication of the declaration under sub-section (1), the right of user [in the land specified therein] shall vest absolutely in the Central Government free from all encumbrances.

(3).....

.....

(3A).....

.....

(4) Notwithstanding anything contained in sub-section (2), the Central Government may, on such terms and conditions as it may think fit to impose, direct by order in writing, that the right of user of the land for laying the pipelines shall, instead of vesting in the Central Government vest, either on the date of publication of the declaration or, on such other date as may be specified in the direction, in the State Government or the corporation proposing to lay the pipelines and thereupon the right of such user in the land shall, subject to the terms and conditions so imposed, vest in that State Government or corporation, as the case may be, free from all encumbrances."

“10. Compensation.- (1) Where in the exercise of the powers conferred by section 4, section 7 or section 8 by any person, any damage, loss or injury is sustained by any person interested in the land under which the pipeline is proposed to be, or is being, or has been laid, the Central Government, the State Government or the corporation, as the case may be, shall be liable to pay compensation to such person for such damage, loss or injury, the amount of which shall be determined by the competent authority in the first instance.

(2) .....

(3) .....

(4) Where the right of user of any land has vested in the Central Government, the State Government or the corporation, the Central Government, the State Government or the corporation, as the case may be, shall, in addition to the compensation, if any, payable under sub-section (1), be liable to pay to the owner and to any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such vesting, compensation calculated at

ten per cent. of the market value of that land on the date of the notification under sub-section (1) of section 3.

(5).....

(6).....”

A bare perusal of these sections would reveal that the Act is a complete Code for dealing with a particular situation. Section 3 provides for the issuance of a Notification specifying that it was necessary to acquire the right of user of the land for the purpose of laying a pipe-line. It also gives the land owner a right to file objections. Section 5 visualizes the hearing of the objections by the Competent Authority and for reasons to be recorded as to why the objections were being accepted or rejected. Section 6 clearly stipulates that after the Competent Authority found that the land was, in fact, required for the purpose of user, it would vest absolutely in the Central Government, free from all encumbrances, and sub-section (4) of section 6 postulates that this right can be transferred by the

Central Government to a nominee of its own choice - the

nominee in the present case being the petitioners. Section 10 gives a right to compensation to the owner of the land for damage caused to the land and sub-section (4) of Section 10 specifically provides that after the land has vested in the Central Government or its nominee, the compensation for damages payable would be calculated at 10 per cent of the market value. Concededly again, this amount has been deposited with the concerned authority. We therefore endorse the argument that after the land had been identified for the purpose of user and the procedure envisaged under the Act had been followed and compensation paid no other cess was leviable and it would not be open for the State Government to take recourse to any other law for the purpose of creating another levy on the property. We have also perused Rule 39 of the Rules, which clearly does not deal with the situation in hand, as it would be applicable to the provision of public utility services such as the laying of water mains, pipes, underground cables, construction of cess-pools and the erection of electricity poles, towers and Stay Cables etc. This rule has no applicability to a right of user created under the Act for the

limited purpose of the laying an

underground pipeline for carrying oil from one place to the other.

5. We accordingly allow the petition and quash the order - Exhibit “M” to the petition. Rule is made absolute accordingly.

CHIEF JUSTICE

V.M. KANADE, J.